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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/359,593	07/23/1999	Robert I. Garver	JHV-009.01	3021

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EXAMINER

NGUYEN, QUANG

ART UNIT	PAPER NUMBER
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1636

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/359,593

Applicant(s)

GARVER ET AL.

Examiner

Quang Nguyen, Ph.D.

Art Unit

1636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 18 August 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1,4-6,9-19,21-26,30-33,35-38,40,42-47 and 49.

Claim(s) objected to: 50.

Claim(s) rejected: 28,29 and 48.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

DAVID GUZZO
PRIMARY EXAMINER

Continuation of 2. NOTE: The amendment to the claims filed on 8/18/04 does not comply with the requirements of 37 CFR 1.121 (c) because claim 3 was totally omitted. Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121 (c).

Continuation of 5. does NOT place the application in condition for allowance because: the amendment to the claims filed on 8/18/04 has not been entered for the reason set forth above.

Additionally, with respect to claim 28, Applicants argue that the term "derived from" is a customary term of art, and refers to viral vectors constructed using any of the known techniques, and the term is intended to and should be understood to embrace vectors wherein functional characteristics of the delivery agent are manipulated relative to the characteristics of the source material. This is not found persuasive because the term implies a number of different steps that may or may not result in a desired change in the functional characteristics of the delivery agent from the source that it is "derived from", for this instance recombinant retrovirus, adenovirus, adeno-associated virus or herpes simplex virus-1. Examiner did suggest the term -- obtained from -- to obviate this rejection.

If the amendment has been entered, amendments to the finally rejected claims 29 and 48 would overcome the art rejection of record. However, amended claim 29 would be objected to because it has the same scope as claim 1, and the phrase "the delivery agent is other than said polycationic molecule of the coacervate microsphere" appears to be recited twice in the amended claim 29.